

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
INCOME TAX REFERENCE NOS. 31/85, 35/85, 35/86 & 76/88.

For Approval of Signature :

Hon'ble MR. JUSTICE B.C. PATEL and  
MR. JUSTICE R.R. JAIN

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1. Whether Reporters of Local Papers may be allowed  
to see the judgments ?

2. To be referred to the Report or not ?

3. Whether Their Lordships wish to see the fair copy  
of the judgment ?

4. Whether this case involves a substantial question  
of law as to the interpretation of the  
Constitution of India, 1950 or any Order made  
thereunder ?

5. Whether it is to be circulated to the Civil  
Judge ?

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Appearance :

ITR NO. 31/85

Mr M J Thakore, Ld. Counsel for M/s RP Bhatt & Co. for  
the Applicant.

Mr HM Talati, Advocate for the Respondent.

ITR NO. 35/85

Mr M J Thakore, Ld. Counsel for M/s RP Bhatt & Co., for  
the applicant.

Mr KC Patel, Advocate for the Respondent.

ITR NO. 35/86

Mr M J Thakore, Ld. Counsel for M/s RP Bhatt & Co., for  
the applicant.

Mr R K Patel, Advocate for the Respondent.

ITR NO. 76/88

Mr M J Thakore, Ld. Counsel for M/s RP Bhatt & Co., for  
the applicant.

Respondent served.

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Coram : B.C. Patel & R.R. Jain, JJ.

Date of Decision : 1st August, 1996

Common Oral Judgment : (Per B.C. Patel, J.)

The Income Tax Appellate Tribunal has referred the aforesaid references for the opinion of this Court. Since the questions being common, learned advocates have requested us to dispose all these references by a common judgment. Hence, we are disposing all these references by a common judgment.

2. The questions referred to in each matter are as under :

Income Tax Reference No. 31/1985 :

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal has not erred in law and on facts in confirming the order of the CIT(A) in allowing reduction of guest house expenses or entertainment expenditure as held by the Tribunal ?"

Income Tax Reference No. 35/1985 :

"Whether the expenditure of Rs.23,665/- claimed to have been incurred by the assessee for maintaining a Guest House for employees on official duties and business associates could not be disallowed under section 37 (4) of the Income-tax Act, 1961 ?"

Income Tax Reference No. 35/1986 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing the claim for maintenance of accommodation at Bombay by holding that the expenditure incurred in this connection was not hit by the provisions of section 37 (4) of the Act ?"

Income Tax Reference No. 76/1988 :

1. Whether in law and on facts, the Appellate Tribunal is right in directing the ITO to allow Rs. 19,087/- being deficit in guest house expenses and Rs.4,213/- being depreciation on guest house assets ?

2. Whether in law and on fact, the assessee is entitled to the allowance of Rs.19,490 being Delhi guest house expenses and the depreciation thereon ?

3. The scope of section 37 (4) has been considered by the Division Bench of this Court in the case of CIT vs. Ahmedabad Mfg. & Calico Printing Co. Ltd., reported in 197 ITR 538. The Court has held that "the opening non obstante clause of sub-section (4) of section 37 makes it clear that the expenditure which is referred to in clause (i) of sub-section (4) is one which would be allowable as deduction under section 37(1). In order to attract the provisions of sub-section (4), it must first be established that it is an expenditure which is covered by section 37(1). Section 37(1) refers to expenditure (i) which is not an expenditure of the nature described in sections 30 to 35; (ii) which is not an expenditure of capital nature; and (iii) which is not personal expenditure of the assessee. It is, therefore, evident that if the expenditure in question is an expenditure of the nature described in section 30 to 36, it would not fall under section 37 (1).

4. In the case of Commissioner of Income-tax, Gujarat-I vs. Gujarat Industrial Development Corporation, Ahmedabad, (Income Tax Reference No. 70/83) decided by the Division Bench of this Court (Coram : Rajesh Balia & M.S. Shah, JJ.) on September 27, 1995, considering the aforesaid case, the Court answered the question in favour of the assessee and against the revenue.

5. In view of the aforesaid decisions, since the case is covered by the principle laid down in this two cases, we answer all the questions referred to above in favour of the assessee and against the revenue. Answer accordingly with no order as to costs.

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